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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,651	02/09/2004	Jeffrey A. Winnie	1345-001/DDH	1450
21034	7590	05/17/2006	EXAMINER	
IPSOLON LLP 111 SW COLUMBIA SUITE 710 PORTLAND, OR 97201			FOREMAN, JONATHAN M	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 05/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/775,651

Applicant(s)

WINNIE, JEFFREY A.

Examiner

Jonathan ML Foreman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-7, 10-14 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10-14 and 16-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 – 6 and 10 - 14 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4,829,539 to Angus et al.

In regards to claims 1 – 6 and 10 – 14, Angus et al. discloses a temperature sensitive module capable of providing a visual indication of the temperature of a hoof to which the module is affixed, the module including a first temperature indicating portion (11B) for indicating the temperature of the hoof on a real-time basis (Col. 2, lines 43 – 45), and a second temperature indication portion (11A) configured to irreversibly indicate if the temperature of the hoof has risen above a predetermined threshold temperature (Col. 2, lines 12 – 14). The second temperature indicating portion provides a visual indication when hoof temperature exceeds a predetermined threshold temperature and wherein the visual indication comprises an irreversible change of color (Col. 2, lines 12 – 28). The first temperature indication portion provides a visual indication of temperature correlated to a numeric value. The numeric value is correlated to a color (Col. 2, lines 43 – 47). Angus et al. discloses at least three individual temperature sensing modules (Figure 1), each module is capable of providing a visual indication of the temperature of a hoof and each module comprises first (11B) and second (11A) temperature indication portions. Angus et al. discloses means for adhering the module (Col. 1, line 68 – Col. 2, line 4) to a hoof. It is noted that a recitation with respect to the manner in which an apparatus is intended to be employed (i.e. for indicating the

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temperature of a hoof) does not impose any structural limitation upon the claimed apparatus that differentiates it from a prior art reference disclosing the structural limitations of the claim. *In re Pearson*, 494 F.2d 1399, 181 USPQ 641 (CCPA 1947); *In re Yanush*, 477 F.2d 958, 177 USPQ705 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 168 USPQ 530 (CCPA 1971); *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); *In re Otto*, 312 F.2d 937, 136 USPQ 458 (CCPA 1963); *Ex parte Masham*, 2 USPQ2d 1647 (BbPatApp & Inter 1987).

3. Claims 1 – 6 and 10 - 14 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 07-703829 to Kojima.

In regards to claims 1 – 6 and 10 – 14, Kojima discloses a temperature sensitive module capable of providing a visual indication of the temperature of a hoof to which the module is affixed, the module including a first temperature indicating portion (2) for indicating the temperature of the hoof on a real-time basis (Page 3, lines 12 – 32), and a second temperature indication portion (3) configured to irreversibly indicate if the temperature of the hoof has risen above a predetermined threshold temperature (Page 3, line 12 – Page 4, line 2). The second temperature indicating portion provides a visual indication when hoof temperature exceeds a predetermined threshold temperature and wherein the visual indication comprises an irreversible change of color. The first temperature indication portion provides a visual indication of temperature correlated to a numeric value. The numeric value is correlated to a color. Kojima discloses at least three individual temperature sensing modules (Figure 3), each module is capable of providing a visual indication of the temperature of a hoof and each module comprises first and second temperature indication portions. Kojima discloses means for adhering (4) the module to a hoof. It is noted that a recitation with respect to the manner in which an apparatus is intended to be employed (i.e. for indicating the temperature of a hoof) does not impose any structural limitation upon the claimed apparatus that differentiates it

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from a prior art reference disclosing the structural limitations of the claim. *In re Pearson*, 494 F.2d 1399, 181 USPQ 641 (CCPA 1947); *In re Yanush*, 477 F.2d 958, 177 USPQ705 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 168 USPQ 530 (CCPA 1971); *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); *In re Otto*, 312 F.2d 937, 136 USPQ 458 (CCPA 1963); *Ex parte Masham*, 2 USPQ2d 1647 (BbPatApp & Inter 1987).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP 07-703829 to Kojima.

It would have been an obvious matter of design choice to modify the irreversible color change of the second temperature indication portion as disclosed by Kojima to irreversibly change from green to red, since applicant has not disclosed that using a color change from green to red provides any advantage, or solves a stated problem, or is used for any particular purpose. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the color change taught by Kojima or the claimed color change from green to red in claim 7 because both irreversible color changes perform the same function of indicating if a predetermined temperature threshold has been exceeded.

6. Claims 16 – 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 07-703829 to Kojima in view of GB 2145224 to Dennis.

In regards to claims 16 – 20, Kojima discloses monitoring the temperature of an animal on a real-time and historical basis, including adhering a temperature sensitive module to the animal (Page 3, lines 25 – 27), wherein the module is configured for providing a visual indication of the temperature of the hoof on a real-time basis and for providing a visual indication of temperature having exceeded a predetermined threshold temperature (Page 3, line 12 – Page 4, line 2). Kojima discloses applying glue to the module. Kojima discloses exposing an adhesive backing on the module and applying the module to the animal (Page 3, lines 25 – 27). However, Kojima fails to disclose adhering the module to the hoof of a horse. However, Dennis discloses applying a temperature sensing module to the hoof of a horse (Col. 2, lines 85 – 87). It would have been obvious to one having ordinary skill in the art to adhere the temperature sensitive module as disclosed by Kojima to the horse of a hoof as taught by Dennis in order to investigate points of infection on the horse's hoof (Col. 2, lines 85 – 87). Kojima in view of Dennis fails to disclose abrading the surface of the hoof, cleaning the hoof, and allowing the surface to dry. However, in the Office Action mailed 10/19/05, official notice was taken of the fact that adherence between an object and a surface can be increased by abrading the surface to which the object is being adhered to. Also, that the surface should be cleaned and allowed to dry so that there are no dust or dirt particles on the surface prior to the adherence. Because Applicant did not traverse this assertion of official notice, it is now taken to be admitted prior art. See MPEP 2144.03. As a result, it would have been obvious to one having ordinary skill in the art at the time the invention was made to abrade the hoof, clean the hoof, and allow the hoof to dry prior to adhering the module to the hoof in order to increase adhesion between the module and the hoof.

***Response to Arguments***

7. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

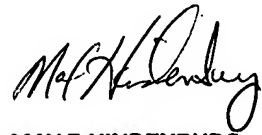
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
JMLF

  
**MAX F. HINDENBURG**  
**SUPPLEMENTARY PATENT EXAMINER**  
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